

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LVB-OGDEN MARKETING, LLC,
Plaintiff,

v.

DAVID S. BINGHAM, SHARON
BINGHAM, CHRISTOPHER BINGHAM,
CHERISH BINGHAM, KELLY BINGHAM,
BINGO INVESTMENTS, LLC, CCRB
ENTERPRISES, LLC, SKBB
ENTERPRISES, LLC, PARK PLACE
MOTORS, LTD., HYTECH POWER, INC.,
HENRY DEAN, in his individual capacity and
as Trustee for the SHARON GRAHAM
BINGHAM 2007 TRUST, and BGH
HOLDINGS, LLC,

Defendants.

No. 2:18-CV-00243-TSZ

***EX PARTE* MOTION FOR FREEZE
REGARDING DISSIPATION OF
TRANSFERS FROM FISHER TRUSTS**

NOTE ON MOTION CALENDAR:
February 28, 2019 (Same Day Motion)

ORAL ARGUMENT REQUESTED

Pursuant to Local Rule 7(d)(1), Plaintiff LVB-Ogden Marketing LLC (“LVB”) respectfully requests that the Court issue a temporary restraining order preventing Defendants from dissipating any transfers received from the Fisher Trust accounts.

The Court has ordered, in granting LVB’s motion for summary judgment, that “Plaintiff is entitled to seize any distributions made or hereafter distributed to Sharon Bingham and/or the SGB Trust from the Fisher Trusts.” ECF 182. With the lifting of the freeze on the Fisher Trust accounts that has been in place since November 21, 2018 (Case No. 19-cv-786, ECF 40 at 9), LVB fully expects that Bank of the West will change course and decide that Defendant Sharon Bingham is now, in fact, capable of receiving distributions. Without notice to LVB, all of the funds in those Trusts will be dissipated without an opportunity for garnishment, and the Court’s ruling will again be circumvented. Accordingly, LVB respectfully requests that the Court enter a temporary freeze preventing any funds transferred to Sharon Graham Bingham and/or the SGB 2007 Trust from the Fisher Trust accounts from being spent, transferred, or otherwise dissipated during the pendency of these proceedings, including the briefing regarding the Trustee claiming “creditor” status by holding other judgments. A Proposed Order has been filed concurrently with this motion.

The Court is empowered to enter such an order to prevent irreparable harm to LVB from dissipation of assets.¹ Here, LVB has already prevailed on summary judgment, and thus is more than likely to succeed on the merits. The risk of dissipation of assets is apparent, and confirmed by the well-documented history of dissipating the assets of the SGB 2007 Trust. For example,

¹ *In re Focus Media Inc.*, 387 F.3d 1077, 1085 (9th Cir. 2004); *Wimbledon Fund, SPC (Class TT) v. Graybox, L.L.C.*, No. 2:15-CV-06633, 2015 WL 5822580, at *5 (C.D. Cal. Sept. 29, 2015) (“Significant case law supports that a district court may freeze a defendant’s assets where there is ‘a likelihood of dissipation of the claimed assets, or other inability to recover monetary damages, if relief is not g[r]anted.’”); *Selective Ins. Co. of Am. v. Kuan-Tsan Yu*, No. 3:14-CV-05888, 2014 WL 12674384, at *3 (W.D. Wash. Nov. 21, 2014) (granting surety’s request for TRO in light of defendants’ “liquidation of personal assets and willingness to transfer assets outside the [U.S.]” instead of providing assets to collateralize obligations to surety); *Kremen v. Cohen*, No. 5:11-cv-05411, 2011 WL 6113198, at *6 (N.D. Cal. Dec. 7, 2011) (granting post-judgment creditor’s request for TRO to freeze assets that defendants received from judgment debtor where “there [wa]s an appreciable risk that defendants” would dispose of identified and currently unknown assets prior to resolution of the fraudulent conveyance action); *Dargan v. Ingram*, No. C08-1714RSL, 2009 WL 1437564, at *3-8 (W.D. Wash. May 22, 2009) (granting creditor’s request for preliminary injunction to freeze assets where “necessary to prevent the consumption, dissipation, or fraudulent conveyance of [defendants] assets”).

1 since LVB filed its Complaint in this matter on February 15, 2018 and the Court granted
 2 Defendants the courtesy of not entering the preliminary injunction LVB requested, the funds in the
 3 SGB 2007 Trust have been whittled away. ECF 215 (12/14/2018 Dean Dep.) at 48:9-11. Absent
 4 the Court's intervention, its ruling will be circumvented or rendered moot to the clear prejudice of
 5 LVB.

6 DATED: February 28, 2019

7 *s/ William R. Squires III*

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CERTIFICATE OF SERVICE

I hereby certify that on February 28, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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